

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WP(C).No. 27421 of 2007(M)

PETITIONER:

K.P.SUDARSAN, S/O PARAMESHWARAN,
PROPRIETOR, CHYTHANYA INDUSTRIES,
RESIDING AT KOLLAMPARAMBU HOUSE,
MUHAMMA P.O., ALAPPUZHA DISTRICT.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENTS:

1. CHERTHALA CO-OP. AGRICULTURAL & RURAL
DEVELOPMENT BANK LTD., NO.A-397,
CHERTHALA, ALAPPUZHA DISTRICT, REPRESENTED BY ITS
SECRETARY.
2. THE PRESIDENT,
CHERTHALA CO-OP. AGRICULTURAL & RURAL DEVELOPMENT
BANK LTD., NO.A-397, CHERTHALA,
ALAPPUZHA DISTRICT.
3. THE SALE OFFICER,
CHERTHALA CO-OP. AGRICULTURAL & RURAL DEVELOPMENT
BANK LTD.NO.A-397, CHERTHALA,
ALAPPUZHA DISTRICT.

4. THE ADDITIONAL DIRECTOR OF INDUSTRIES,
DEPARTMENT OF INDUSTRIES,
THIRUVANANTHAPURAM.

5. THE SECRETARY TO THE DEPARTMENT OF
CO-OPERATION, THIRUVANANTHAPURAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.S.P.ARAVINDAKSHAN PILLAI
SMT.N.SANTHA

BY GOVT. PLEADER SMT. ANU SIVARAMAN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.M.JOSEPH, J.

WP.(C) No. 27421 of 2007

Dated this the 1st day of November, 2007

JUDGMENT

Petitioner availed a loan for starting a small scale unit from the first respondent Bank. It was not repaid. Ext.P1 is the sale notice issued by the Sale Officer. Petitioner had approached this court earlier and the matter culminated in Ext.P5 judgment. Therein this court had directed that Ext.P1 therein, which is the same as Ext.P1 herein, shall not be enforced if the petitioner makes payments as stated therein. He was directed to pay Rs.1,40,000/- before the time of sale mentioned in Ext.P1, Rs.Seven Lakhs within two months from the date of the judgment and the balance amount within three months from the date of the judgment. It was also directed that if the petitioner made an application seeking the benefit of Ext.P4 Circular, a decision will be taken by the respondent Bank and communicated it to the petitioner. It was also directed that if the sum of Rs.1,40,000/- was not paid before the time of sale or Rs.7 Lakhs or the balance amount as directed, the petitioner will lose the benefit of the judgment. Petitioner approached

this court prior to the date fixed for payment of Rs.Seven Lakhs. His complaint is that the respondent Bank is not releasing the title deeds relating to the property which the petitioner intended to sell to raise Rs.Seven Lakhs. Petitioner had also filed an application seeking the benefit of Ext.P4 Circular, that has been rejected by Ext.P10 on the score that the Circular is not applicable. Petitioner has also amended the Writ Petition and incorporated a ground challenging Ext.P1 on the ground that it is not keeping with the requirement of Rule 8 of the Kerala State Co-operative Agricultural Development Bank Rules. According to him Ext.P1 notice does not contain the particulars regarding the nature of the property and the improvements which have been made after securing the loan.

2. I heard learned counsel for the petitioner and the learned counsel for the Bank besides the learned Government Pleader. The first question to be considered is whether the stand of the Bank that Ext.P4 is inapplicable is to be sustained. The relevant portion of Ext.P4 Circular is extracted herein.

Learned counsel for the petitioner submits that it is an inclusive definition and even though the word non-agricultural is used as the first respondent Bank is advancing loan for agricultural and rural development, it will therefore fall within the scope of Ext.P4 Circular. In fact he pointed out that the very fact that the loan given to the petitioner itself is non-agricultural would go to show that the Bank is also giving non-agricultural credit and it is a Non-Agricultural Bank.

3. Per contra, Sri. S.P.Aravindaksha Pillay, learned counsel for the first respondent would submit that what is important is the nature of the Bank and not the nature of the loan. Government Pleader also supported the first respondent Bank. She pointed out that Primary

Agricultural Credit Society is defined in S.2(oa) of the Co-operative Societies Act. Primary Credit Society is defined in Section 2(ob). It is pointed out that Primary Co-operative Agricultural and Rural Development Act is defined in S.2(oc). It reads as follows:

““Primary Co-operative Agricultural and Rural Development Bank” means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities.”

It is the case of the Government Pleader that going by the definition it cannot be treated as non-agricultural bank. There is merit in the contention of the party respondent and the official respondent that the first respondent may not fall within the scope of Ext.P4 Circular. Admittedly the first respondent is an Agricultural and Rural Development Bank. Therefore by the definition as the object of such Bank is to give long term credit to Agricultural and Rural Development Bank, it may not be possible to say that it is a non-agricultural bank. The fact that non-agricultural loan is given may not alter the nature of

the Bank and what is emphasised in Ext.P4 circular is the nature of the Bank. Therefore I reject the contention of the petitioner that it is a non-agricultural Bank and therefore it falls within the scope of Ext.P4. It may not also be correct to say that it is an inclusive definition so as to include the respondent Bank.

4. The further contention raised by the learned counsel for the petitioner is that Ext.P1 is the sale notice issued by the Sale Officer under the Act. No doubt Rule 8 provides for furnishing the matters relating to the nature of the property. No doubt it is a salutary provision so that a just value is obtained and also the purchaser is made fully aware of the actual nature of the property which is put up for sale. But the question is whether the petitioner can in the facts of the case be permitted to impugn Ext.P1 on the ground which is purported to be raised by way of amendment in the present writ petition. Counsel for the first respondent submits that the said challenge is barred by res judicata. Of course counter affidavit as such is not filed because the writ petition itself is not admitted. He points out that Ext.P1 herein was Ext.P1 in the earlier writ petition. Counsel for the petitioner would

point out that it is only because it was understood that the application seeking the benefit of Ext.P4 Circular will be considered that he did not press the ground and therefore there cannot be any obstacle in his pursuing the said ground. I find that there is no merit or bonafides in the challenges to Ext.P1 on the ground purported to be raised. It is to be noted that the petitioner had not even raised this ground in the earlier writ petition. Therefore I fail to see how he can argue that he would have pursued the challenge to Ext.P1 in the present form if it was not his understanding that his application for benefit of Ext.P4 would be considered. Petitioner has not even cared to raise this contention in the earlier round and therefore it may not be open to the petitioner to raise this ground in the present writ petition.

5. Of course learned counsel for the first respondent submits that it is open to the petitioner to challenge it after the sale is held. Of course it is pointed out by the petitioner that there is no provision for challenging the sale except on deposit of the entire amount.

6. Learned counsel for the petitioner submitted that the first respondent may release one of the items of property as there are

intending purchasers for the said item of property and they are prepared to give the balance amount only on getting the title deeds after paying the amount. It is submitted by the learned counsel for the first respondent that the it may not be open to the petitioner to persuade the Bank for release of a portion of the property. He also pointed out that the total extent of the property is only 3 acres and 46 cents. It is also pointed out that the property proposed to be sold for realisation of balance Rs.Seven Lakhs comes to 2 acres and 52 cents. Then learned counsel for the petitioner points out that at any rate this court may direct that the upset price may be fixed on the basis of the price shown in Ext.P11 agreement for sale.

7. I do not think that it is for this court to direct the Bank to fix the price shown in Ext.P11 as the upset price in proceedings under Article 226. Therefore I do not find that there is merit in the contention of the petitioner.

8. Learned counsel for the Bank submits that the Bank however is even now amenable to grant some time. He submits that two weeks from today can be granted for payment of Rs.Seven Lakhs and the time

for payment of the balance amount can be extended as three months from today.

In such circumstances while dismissing the writ petition I make it clear that if the petitioner pays Rs.Seven lakhs within two weeks from today and also pays the balance amount remaining to be paid within three months from today, recovery proceedings shall be kept in abeyance. If the petitioner does not pay Rs.Seven Lakhs within two weeks from today or the balance amount within three months from today, the petitioner will lose the benefit of this judgment and the first respondent can proceed against the petitioner.

(K.M. JOSEPH, JUDGE)

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